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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/224,980	01/04/1999	ANTHONY R. WALDROP	2003-1	3080

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EXAMINER
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BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/224,980

Applicant(s)

WALDROP ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 15-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Priority***

1. The Applicant argues that the present application should be entitled to priority to US 5,807,794 and other earlier patents related to the present application. US 5,807,794 fails to teach using a woven fabrics as the reinforcing fabric support layer. It instead teaches that this layer is a knit fabric with yarns inserted in the weft and warp directions. The Applicant argues that since US 5,807,794 teaches that the furniture support textile can be joined to a woven or knit fabric cover layer and the present invention is drawn to *replacing* the *two layer* structure with a *single* woven layer, than the woven furniture support layer taught by the present invention is supported by US 5,807,794 (Response, page 2, 3<sup>rd</sup> paragraph).

How can a *two layer* composite which requires a knit furniture support layer and woven or knit cover layer be support for a *single* woven fabric layer which *replaces* the two layer composite, as argued by the Applicant. If US 5,807,794 teaches two layers are needed for the furniture fabric than this patent cannot support an invention which only needs one layer. Nor does the fact that US 5,807,794 suggests that the cover layer is woven provide support for replacing the knit furniture support layer with a woven layer. For the Applicant to be entitled to priority the previous applications and patents must disclose the presently claimed invention.

First, US 5,807,794 does not teach, or even suggest, that the furniture support layer is woven. While the knit fabric includes inserted yarns in the warp and weft direction, these yarns are held together by the knit fabric and are not interwoven together. Further, US 5,807,794 in no way teaches or suggests that the knit yarns can be removed from the fabric support layer, leaving only the warp and weft inserted yarns. Second, a two layer composite structure, which needs

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both layers to perform its intended purpose can not teach or suggest a one layer woven structure, since there is no teaching in the prior art to remove the cover layer and make the support layer a woven fabric. Therefore, priority is only given to US 5,856,249 which teaches the woven support fabric.

***Double Patenting***

2. Claims 15 – 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 3 and 6 – 8 of U.S. Patent No. 5,856,249 for the reasons of record.

3. Claims 15 – 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,855,991 in view of Gretzinger et al. (4,469,739) for the reasons of record.

4. It is noted that the Applicant has indicated that a Terminal Disclaimer will be filed to overcome the double patenting rejections.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 15 – 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gretzinger et al. in view of Stumpf et al. (6,035,901) for the reasons of record.

7. Claims 15 – 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stumpf et al. in view of Gretzinger et al. for the reasons of record.

8. Claims 15 – 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McLarty, III (5,855,991) in view of Gretzinger et al. for the reasons of record.

*Response to Arguments*

9. Applicant's arguments filed March 24, 2003 have been fully considered but they are not persuasive. The Applicant argues that the combination of Gretzinger and Stumpf fails to teach or suggest a textured yarn mixed with elastomeric filaments running perpendicular to the elastomeric monofilaments (Response, page 4). However, it is felt that the combination of Gretzinger and Stumpf does teach this feature. First, Gretzinger et al. teaches that it is customary to add UV stabilizers to the elastomeric filaments (column 8, lines 39 – 45). Second, Gretzinger discloses that the elastomeric monofilaments run perpendicular to the multi-filaments synthetic yarn (column 9, lines 33 – 38). Thirdly, Gretzinger teaches that the fabric can be modified by adding a minor quantity of elastomer to the synthetic yarn. Thus, Gretzinger teaches adding UV stabilizers to elastomeric filaments, the synthetic yarn is in a direction perpendicular to the elastomeric monofilament, and the synthetic yarn can include minor amounts of elastomer. Stumpf discloses a woven fabric comprising elastomeric monofilaments running **374** in one direction and yarns comprising polyester **376** and elastic filaments **378** running in the perpendicular direction, as shown in Figures 36 - 38 (column 17, lines 5 – 10). In fact Stumpf teaches that the strands running perpendicular to the elastomeric monofilaments are made from bundles of spun, textured, or twisted nylon or polyester and can provide additional support by incorporating an elastomeric filament into said strands. Hence, Stumpf clearly teaches texturized yarn mixed with elastomeric filaments sunning perpendicular to the elastomeric monofilament. Thus, the combination of the two references clearly produces the limitation, i.e., a textured yarn mixed with elastomeric filaments running perpendicular to the

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elastomeric monofilaments, which the Applicant argues is deficient, since both references combined teach the claimed structure. Therefore, the rejection is maintained.

10. The Applicant further argues that the rejection based on Stumpf in view of Gretzinger fails to teach a textured yarn mixed with elastomeric filaments running perpendicular to the elastomeric monofilaments (Response, page 5). However, as set forth above, it is felt that the references combined teach the claimed structural features of claim 15. While, the Applicant states that these references do not teach the textured yarn mixed with elastic filaments, the Applicant does not clearly point out what is deficient in the prior art. Unless the Applicant can be more specific as to what is deficient about Gretzinger and Stumpf then the rejections will be maintained.

11. With respect to the Applicant's argument that the rejection based on McLarty, III is improper since McLarty, III is commonly owned (Response, page 6), the Applicant has not submitted the proper evidence to establish that the reference was properly owned. The Applicant's statement that the present application and McLarty, III are (or will be if not done yet) commonly assigned to Milliken, does not meet the requirements set for in MPEP §706.02 (I)(2). Until the Applicant meets those requirements, the rejection based on McLarty, III is maintained.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo  
April 30, 2003



**CHERYL A. JUSKA**  
**PRIMARY EXAMINER**